HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CONTEMPT PETITION NO. 10 OF 2001.
IN
CONTEMPT PET. NO. 221 OF 2000.
IN
B.C.C. SUIT NO. 1843 OF 1981.

A. S. Bhatty.
R/o: 4-B, Girnar Apartments,
55, Pali Hill, Bandra (W),
Mumbai - 400 050. ..Appellant.

Versus.

1. R. Y. Raghu Rao,]
R/o: Flat No.9, Souvenir,]
1st Pasta Lane, Coloba,]
Mumbai - 400 005.]
]
2. G.S.Bhatty,]
R/o: Bhagtani Heights,]
Off Yari Road, Versova,]
Andheri (W), Mumbai 61.]
]
3. S.S.Bhatty,]
R/o: 303, Kalpak Hormus]
Perry Cross Rd,]
Bandra (W), Mumbai - 50]
]
4. The Court Reciver,]
High Court, Bombay.] ..Respondents.

Mr. Girish S.Godbole i/b Mr. Manoj B. Dalvi for the appellant.

CORAM: S.B.MHASE &
D.B.BHOSALE, JJ.

DATE: JANUARY 18, 2005.

Oral Judgment (Per D.B.Bhosale, J.)

1. This contempt appeal is directed against the judgment and order dated 30.3.2001 passed by the learned

Single Judge in Contempt Petition No. 221 of 2000 finding the appellant guilty of contempt. The operative part of the order reads thus:

> *"The contemnor is found guilty of contempt. He is directed to deposit a fine of Rs.30,000/- (Rs. Thirty Thousand only) in this Court within four weeks, and out of this amount Rs.15,000/- (Rs. Fifteen thousand only) shall be permitted to be withdrawn by the petitioner. Balance will remain deposit in the court.*
>
> *The contemnor will pay royalty at enhanced rate from 1st April 2000 at the rate of Rs.16,000/- (Rs.Sixteen thousand only) per month."*

2. The appellant is alleged to have committed contempt of the order dated 2nd May 1991 passed by the City Civil Court, Bombay by which the appellant-contemnor was permitted to carry on any business permissible under law in the suit premises and execute the agency agreement with the Court Receiver. While permitting the appellant to carry on the business, it was made clear that he shall carry on the business as a proprietor and not in any other manner whatsoever. Since that order of the City Civil Court, was defied by the appellant by inducting the M/s. Sispro

Software International Services Limited, the proceeding under the Contempt of Court Act was initiated for committing breach of that order.

3. Mr. Girish S.Godbole, learned counsel appearing for the appellant, at the outset submitted that in view of the subsequent developments, namely, the compromise between the parties and the order passed by this court in terms of minutes dated 17th March 2003 in Appeal from Order No. 322 of 2003 in Notice of Motion No.3511 of 2002 in S.C. Suit No.1843 of 1981, and considering the additional affidavit filed by the appellant whereby he has tendered unconditional apology for having permitted M/s. Sispro Software International Services Limited to use the suit premises for a short period a lenient veiw be taken by modifying the impugned order in the instant appeal. In so far as enhancement of royalty is concerned, Mr. Godbole submitted that in any case under the Contempt of Courts Act there is no jurisdiction to enhance the royalty fixed way back in the year 1991.

4. We perused the impugned order as also the Minutes of Order dated 17th March 2003 and the other material placed for our consideration. It is clear from the Minutes of Order dated 17th March 2003 that the whole dispute between the parties has been worked out. The

appellant in the additional affidavit dated 18th January 2005 has brought the subsequent developments on record and in paragraph No.5 thereof, tendered an unconditional apology. Keeping that in view and considering the subsequent developments and in particular the order passed by this court in terms of the Minutes of Order dated 17th March 2003, though we are not inclined to interfere with the impugned order, we propose to take a lenient view and modify the impugned order passed by the learned Single Judge. Hence, the following order.

O R D E R.

1. The appeal is partly allow

2. The order finding the a guilty of contempt stands confirmed.

3. The unconditional apology the appellant is accepted.

4. The fine of Rs.30,000/- in the learned Single Judge stands reduced to Rs.15,000/-. The appellant is directed to deposit fine of Rs.15,000/- to be paid to the respondent No.1. We are informed that the

appellant has already deposited the amount of Rs.30,000/- in pursuance of the impugned order and out of the same Rs.15,000/- have also been withdrawn by the respondent No.1. In view thereof, the appellant is allowed to withdraw the balance of Rs.15,000/- deposited in this court.

5. In sofar as the order en

royalty at the rate of Rs.16,000/- per month from 1st April 2000 is concerned, it is quashed and set aside.

(D.B.BHOSALE,J.) **(S.B.MHASE, J.)**

:srp/2005/